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**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

CRA-S-1242-SB-2010 (O&amp;M)

Date of Decision: 04.04.2025

BALBIR SINGH @ KAKU

...APPELLANT

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Avtar Singh Bhatti, Advocate as *Legal Aid Counsel*  
for the appellant.

Mr. Vikas Bhardwaj, AAG Haryana.

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**Harpreet Singh Brar, J. (Oral)**

1. Present appeal has been preferred by the appellant against the judgment of conviction and order on quantum of sentence dated 31.03.2010 passed by learned Sessions Judge, Sirsa vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15 of NDPS Act	Rigorous imprisonment for 02 years	Rs. 10,000/-	Simple imprisonment for four months

2. Brief facts of the case are that on the day of occurrence, police party headed by ASI Gurmeet Singh was present near Railway Station crossing, in the area of village Saharni in connection with patrolling duty. When police party was talking amongst themselves, one scooter was seen coming from the side of village Khairekan. When ASI Gurmeet Singh with the help of torch light signalled to stop, the scooterist tried to flee away, but the said scooterist and pillion rider thereof, who were holding a gunny bag, were apprehended on the basis of suspicion. Their identities were verified and pillion rider disclosed his name as Balbir Singh @ Kaku (petitioner herein). On the basis of suspicion,

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search of the appellant-accused, co-accused along with their belongings was conducted. Thereafter, on search of gunny bag, carried by the appellant and co-accused, poppy husk was recovered. Out of the poppy husk, two samples each of 100 grams were separated and remaining on weighment was found to be 40.800 kilograms. All the parcels were sealed. FIR(*supra*) was registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

3. Learned *Legal Aid Counsel* for the appellant *inter alia* contends that alleged recovery of contraband was effected on 27.05.2024, however, the representative sample was sent to the office of Chemical Examiner on 22.06.2024 and on this ground alone, the appellant is entitled to be acquitted of the charges framed against him. Further, the entire case of prosecution is based upon the testimonies of official witnesses and no independent witness was joined at the time of effecting alleged recovery. Further, the offer under Section 50 of NDPS Act was not proper and the MHC concerned was examined in defence and he has deposed that no seal of sample was deposited with the MHC and there is non-compliance of Sections 50 and 51 of NDPS Act. Lastly, he contended that appellant is not involved in any other case and has undergone a period of 05 months and 05 days of custody out of total sentence of 02 years awarded to him.

4. Per contra, learned State counsel opposes the prayer of the appellant on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, the appellant does not deserve any leniency.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted

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for being in possession of 41 kilograms of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 05 months and 05 days out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under Section 15 of NDPS Act, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellant is reduced to the period already undergone by him.

6. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient.

7. Further, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to

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strike a balance between the efficacy of law and the chances of reformation of the accused.

8. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the said judgment is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 27.05.2004 and the appellant has been suffering the agony of trial for last more than 20 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends to live a peaceful life.

9. Therefore, in view of the discussion above, the present appeal is disposed of in the following terms:-

(i) The judgment dated 31.03.2010 passed by the learned Sessions judge, Sirsa is upheld.

(ii) The order of sentence dated 31.03.2010 is modified to the extent that the sentence of rigorous imprisonment for 02 years along with fine of Rs. 10,000/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

11. High Court Legal Services Committee is directed to pay remuneration to the Legal Aid Counsel, as per rules.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**04.04.2025***Ajay Goswami**Whether speaking/reasoned*  
*Whether reportable**Yes/No**Yes/No*